LEGISLATIVE

RESEARCH COMMISSION

CARE PROVIDED BY REST HOMES, INTERMEDIATE CARE FACILITIES, AND SKILLED NURSING HOMES; AND OMBUDSMAN

REPORT TO THE
1989 GENERAL ASSEMBLY
OF NORTH CAROLINA
1989 SESSION

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STATE OF NORTH CAROLINA

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING

RALEIGH 27611

December 14, 1988

TO THE MEMBERS OF THE 1989 GENERAL ASSEMBLY:

The Legislative Research Commission herewith submits to you for your consideration its final report on the care provided by rest homes, intermediate care facilities, and skilled nursing homes and ombudsman. The report was prepared by the Legislative Research Commission's Committee on Care Provided by Rest Homes, Intermediate Care Facilities, and Skilled Nursing Homes; and Ombudsman Study pursuant to Section 2.1(41) of Chapter 873 of the 1987 Session Laws.

Respectfully submitted.

Liston B. Ramsey — J. J. (Monk) Harrington

Cochairmen
Legislative Research Commission

1987-1988

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PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is a general purpose study group. The Commission is co-chaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)). At the direction of the 1987 General Assembly, the Legislative Research Commission has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Co-chairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Co-chairs, one from each house of the General Assembly, were designated for each committee. The study of Care Provided In Rest Homes, Intermediate Care facilities, etc. was authorized by Section 2.1(41) of Chapter 873 of the 1987 Session Laws, 1987 Session. That act states that the Commission may consider Senate BillS 856 and 857 in determining the nature, scope and aspects of the study. The relevant portions of Chapter 873 and Senate BillS 856 and 857 are included in Appendix A. The Legislative Research Commission grouped this study in its Human Resources area under the direction of Senator James F. Richardson. The Committee was chaired by Senator Ollie Harris and Representative Ruth M. Easterling. The full membership of the Committee is listed in Appendix B of this report. A Committee notebook containing the Committee minutes and all information presented to the Committee is filed in the Legislative Library.

BACKGROUND

There are currently 25,000 people in nursing homes and another 23,000 in rest homes in North Carolina. Approximately 60 percent of the residents of these facilities are 65 and older; the average age in nursing homes is 83. These numbers will continue to grow as the older population grows. Today there are more than 700,000 people 65 and over in North Carolina. At the turn of the century, the average life span in America was 47; today it is 71 for men and 78 for women. These are the average life spans; many live longer. In fact people 85 and older are the fastest growing segment of the older population today.

Although there are many potential issues related to long term care facilities, Senate Bills 856 and 857, introduced by Senator Ollie Harris, outlined the scope of work for this Committee. S.B. 856 suggested that the Legislative Research Commission study the issue of care provided by rest homes, intermediate care facilities, and skilled nursing homes.

For general definitional purposes, a nursing home is a facility for sick people. Two levels of care may be provided - intermediate nursing care and skilled nursing care. As of March 1988, there were 240 nursing homes in North Carolina with 24,177 beds: 12,620 are intermediate care beds and 11,557 are skilled nursing beds. At the end of the second quarter of 1989 there will be 26,185 beds. The State Medical Facilities Plan which was effective January 1, 1988, contains an additional 2,513 beds that will be allocated to facilities in 1988 and 1989.

A team made up of an administrator, two nurses, and a dietician and/or pharmacist visits each nursing home at least once a year. Complaints in nursing homes, which average about four per day, are investigated by four nurses in the Division of Facility Services. The Division uses its own discretion as to how soon a complaint is investigated.

The other type of facility of concern to the Committee is the rest home which is a facility for persons who need assistance with the activities of daily living. The following listing outlines the number of rest homes in North Carolina:

1. Homes for the aged and disabled (homes serving 7 or more residents) - 396 facilities with 16,570 beds.
2. Family Care Homes (Homes serving 2 to 6 residents) - 703 facilities with 3,427 beds.
3. Non-Medical Group Care Facilities (Homes for developmentally disabled adults) - 161 facilities with 921 beds.
4. Mental Health Treatment Facilities - 971 facilities with 3,298 beds.

In order to be licensed as a rest home, an application is filed with the county department of social services and forwarded to the Division of Facility Services. An initial visit is made to the facility by a team of consultants from the Division of Facility Services and includes architects and engineers to determine if the structure meets the minimum standards for a facility. Thereafter, a facility's license is renewed annually based on a recommendation from the local county department of social services. Staff from the Division of Facility Services is available to work with the local departments in solving problems in any of the facilities.

S.B. 857 suggested the following topics related to the ombudsman program:

1. The need for a State statute for the long-term care Ombudsman Program;
2. The best administrative placement for the ombudsmen positions;
3. The appropriate number and distribution of the ombudsmen positions;
4. The authority and responsibility of long-term care ombudsmen to investigate and resolve complaints in rest homes and intermediate and skilled nursing facilities.
5. Training requirements for long-term care ombudsmen;
6. Budgetary needs for a long-term care ombudsmen program; and

7. Any other issues relevant to developing and implementing a long-term care ombudsmen program.

A Long Term Care Ombudsman program is required in each state under the Older American's Act to advocate for the residents of facilities who tend to be frail and isolated from community resources. While program structures vary from state to state, ombudsmen advocate on behalf of individuals who are experiencing problems in a facility such as alleged inadequacies of care or alleged mistreatment of residents.

COMMITTEE PROCEEDINGS

The Legislative Research Commission's Committee on Rest Homes, Intermediate Care Facilities, Skilled Nursing Homes, and Ombudsman met eight times during the course of its deliberations: December 3, 1987, January 14, 1988, February 29, 1988, April 11, 1988, September 14, 1988, October 26, 1988 and November 21, 1988.

At the first meeting on December 3, 1987, the Committee began a review of the Ombudsman Program. With the Division of Aging as the administrator, this program began in North Carolina in 1975. Five types of long term care facilities come under the Ombudsman Program:

1. Skilled nursing home facilities,
2. Intermediate care facilities,
3. Homes for the aged,
4. Family care homes, and
5. Group homes for developmentally disabled adults.

At the present time North Carolina has eighteen ombudsman positions with fifteen part time and three full time positions in Charlotte, Greensboro and the Research Triangle, all of which are administered under a three tiered system under the Division of Aging. They are administratively located within the Council of Governments throughout the State. The three-tiered system is as follows:

1. State long term care ombudsman who have primary responsibility for administration of the program.
2. Regional Ombudsman positions at the area level who are responsible for training and support of the Community Advisory Committees.
3. Local Nursing Home and Domiciliary Home Community Advisory Committees that involve over 1200 volunteers.

The Ombudsman Program, although required by the Older Americans Act, has no North Carolina statute addressing the program. However, legislation was passed by the General Assembly establishing the Community Advisory Committees. As mandated by statute, there is a Community Advisory Committee for each nursing home and rest home in the State. The Ombudsman Program coupled with the Community Advisory Committees is designed to enable each county to develop programs relevant to the needs of nursing home and rest home patients in that county and also to resolve complaints at the local level. If the Committees are unable to resolve complaints, the Division of Facility Services is contacted for nursing home problems and the local social services department may be contacted for rest home complaints.

The Committee listened to two ombudsman from different sized regions discuss their programs. Mrs. Hedt is full time regional ombudsman based at Centralina Council of Government in Charlotte. Her region includes eight counties with over 2,000 residents in 139 domiciliary homes and 4,000 residents in 38 nursing homes. She serves as advocate for the residents as well as for the administrators of the facilities.

Mrs. Lane, regional ombudsman for Cape Fear Council of Government, gave the Committee a perspective on a region that is smaller geographically and has less facilities. Her position is part-time. These two speakers illustrated for the Committee the diversity of the Ombudsman Program.

Over the course of the discussion there were changes suggested for the present ombudsman program such as:

1. Provide enabling legislation that will allow ombudsman to go into a facility and talk with a resident and an administrator about a specific problem,
2. Provide additional funding for more positions,
3. Clarify to whom the Community Advisory Committees are responsible,
4. Define the issue of immunity, and

5. Provide ways for expansion of Community Advisory Committees if circumstances require a larger committee.

The second meeting on January 14, 1988 focused on the regulatory process for nursing homes and rest homes. Mr. I. O. Wilkerson, Jr., Director of the Division of Facility Services spoke about the process of licensure for nursing homes and rest homes. All of the technical information is contained in the Committee minutes.

Ms. Joan Holland addressed the extremely complicated system for regulating rest homes and the role of the State and local departments of social services in this licensure and regulation. The Secretary of the Department of Human Resources has assigned responsibility for supervision of the licensure and regulation of rest homes to the Division of Social Services.

The Division of Social Services, under this authority, supervises the activities of the local county departments of social services in accordance with the Domiciliary Home Procedure Manual and administers the standards for licensing and inspection as established by the Social Services Commission. The Division also develops proposed licensure standards to be considered and adopted by the Social Services Commission. This development process involves other divisions within the Department of Human Resources that have an interest in licensure of rest homes.

The county departments of social services with consultation and technical assistance from the Division of Social Services are involved in the actual licensure of rest homes. They are responsible for documenting that the home meets the wide range of standards for staffing, programs, activities, etc. in order to be licensed. The county department then submits an application for licensure to the Division of Facility Services.

County departments are also responsible for on-going monitoring of the homes and documenting that the homes continue to comply with standards. A monthly visit is required to be made to each home. An annual evaluation, which is done by the county department of social services, is submitted to the Division of Facility Services with a

recommendation for or against a renewal of license for the home. Investigation of complaints is the responsibility of the county departments of social services. The Division of Facility Services may become involved in the complaint investigation process, if needed. The Committee discussed if there were any changes that would improve the rest home regulatory system to provide better services. Ms. Holland suggested that the staff in these homes need to be better trained and additional staff and programs need should be added to meet the needs of those mentally ill and developmentally disabled persons who are placed in rest homes. County departments of social services should be equally staffed throughout the State so that they can be able to respond to complaints about rest homes. Also, the Division of Facility Services has less than adequate staff to be able to adequately assist local departments when needed.

Another barrier concerns the appeals process under the Administrative Proceedures Act. When a decision has been made to revoke a facility license, there is an automatically triggered appeals process, during which time the facility remains in operation. It was suggested that this was a problem for both nursing homes and rest homes.

The Committee devoted the next three meetings to public hearings. These meetings were in Charlotte on February 29, 1988, in Wilmington on April 11, 1988 and Raleigh on September 14, 1988. There were no restrictions placed upon the speakers except that they were asked to address, in a general way, the issues before the Committee. The Committee used the good services and help of the Aging Network to publicize the hearings. In each case the public hearings generated local interest and coverage by the media.

Over 100 persons spoke to the Committee. Many of them were citizens with personal experiences relating to care in nursing and rest homes. These people wanted to relate a story that in some cases was unfavorable to specific long term care institutions.

The Committee recognizes that the process of public hearings allows the negative to overpower the positive aspects of care to our institutionalized citizens. Even with the great amount of negative testimony there was also testimony that reflected positively upon the

regulatory process and the nursing home and rest home industry. The Committee tried to maintain a balance and use the testimony presented to it as an indicator for further study and investigation, not as a sensational and irrational tool for blanket condemnation.

Many issues were brought to the attention of the Committee. The following summary will give some indication of the scope of the hearings and the amount of information placed before the Committee. A complete record of the testimony is on file with the Committee. The following four categories points summarize the material:

I. Appropriate and efficient resolution of complaints:

(a) provide funding for additional inspectors and complaint investigators for the Division of Facility Services.

(b) provide funding for additional staff for the Division of Social Services in the area of adult foster care to oversee and support county departments of social services in properly fulfilling their monitoring function.

(c) amend the resident's Bill of Rights to assure that consumers and prospective consumers are offered ready access to monitoring and corrective action reports.

(d) specify the right of consumers to intervene in a contested case hearing involving a sanction against a home where they or a family member is residing.

(e) do not allow the ombudsman to be part of the regulatory process.

(f) allow a county department of social services to appeal a decision by the Division of Facility Services concerning a sanction recommended by the local DSS against a domiciliary home for violation of rights and standards.

(g) require an automatic surcharge of one percent per day on any fine imposed on a long term care facility which has not paid the assessed fine by the due date.

(h) consolidate rest home regulation into one agency.

(i) protect confidentiality of those making complaints,

(j) decrease length of time for violation appeals,

(k) those rest homes which exceed a specified number of citations not be given license for additional homes,

(l) assess larger fines, with fines being trebled for repeated violations,

(m) notify responsible family member of a substantiated complaint

(n) allow nursing home and rest home residents to go to court recovery of monetary damages,

2. Recommendations for changes in Ombudsman Program;

(a) increase amount of time for ombudsman,

(b) equalize the load among the 18 regional ombudsman programs,

(c) exempt from liability ombudsmen and Community Advisory Committees for good faith performance of official duties,

(d) leave the ombudsman at the local level as employees of the Area Agency on Aging,

(e) strengthen training of the ombudsman and Community Advisory Committees,

3. Availability and access of nursing home beds,

(a) abolish CON,

(b) establish another level of care between hospital and skilled nursing,

(c) allocate 100 nursing home beds to Mecklenburg County on an emergency basis,

(d) expedite development of beds already allocated,

(e) establish incentives to provide specialized care in nursing homes,

(f) do not allow nursing homes that participate in Medicaid to refuse Medicaid patients,

(g) expedite Medicaid applications to get persons out of hospitals.

(h) require an FI-2 form on all persons seeking long term care.

(i) require facilities to perform on the basis of the promises made in CON application.

4. Quality of Care Issues;

(a) provide funding to the county departments of social services to hire additional adult home specialists so that caseload limits can be established and the homes be properly monitored,

(b) establish legislatively a receivership statute so that a receiver can be quickly appointed, whenever the State has, through administrative processes, revoked or suspended the license of a long-term care facility,

(c) require crime prevention programs in facilities,

(d) develop mechanism that will enable the public to determine which facilities have substantial cases of neglect and abuse filed against them, and other kinds of information which the public is entitled.

(e) central registry for facility administrators to indicate those persons convicted of felonies and substantial abuse and neglect that would be potential employees.

(f) provide better care for mentally ill in rest homes,

(g) review the ratio of staff to patients.

(h) review training needs of aides and workers,

(i) hold beds for Medicaid patients who are in hospital,

(j) use more physician assistants and family nurse practitioners in long term care facilities,

(k) to decrease nursing shortage some tasks of nurses should be turned over to nursing assistants.

(l) activity programs directed by professionals for rest home patients.

(m) need for greater personal allowance for Medicaid recipients in nursing homes.

(n) require long term care facilities to cover laundry.

(o) give Attorney General's Office authority to prosecute cases of abuse and neglect.

(p) develop a rating system of facilities.

(q) establish reward system for care providers who provide better than minimum standards.

(r) lift six perscription limit for Medicaid patients in nursing homes.

(s) license of rest home facility separate from administrator.

(t) notify patients in nursing homes that the facility has been issued a provisional license or notice of revocation.

(u) enforce existing staffing requirements.

As there has been concern about care received in nursing homes in North Carolina, so there has also been concern and action at the national level. Changes have been developing for six or seven years. Early in the 1980's some changes in the federal nursing home requirements were proposed that generated a great deal of controversy. As a result, Congress directed the Department of Health and Human Services to conduct a study. This Study was executed by the Institute of Medicine and was published in 1986 with about 50 very specific recommendations for changes in the nursing homes regulatory system.

Some of these Institute of Medicine recommendations and several Congressional bills were pieced together and included within the Omnibus Budget Reconciliation Act of 1987 (OBRA). As a result, experts have testified before the Committee that OBRA is the most comprehensive and far reaching revision of the Medicare and Medicaid Programs since their inception. This legislation represents a subtle but profound change in the role of the federal government in nursing home regulation.

Heretofore states have had primary responsibility for protecting public health, and as a result have been the regulators of health care institutions. But OBRA will change this tradition. Not only is the statute itself very detailed, but the regulations that are being issued by the federal government as a result of OBRA are very prescriptive. States will no longer have the degree of flexability that has traditionally been the case.

In 63 pages of federal statute OBRA divides the new nursing home requirements into four subsections:

1. the definition of a nursing facility,
2. requirements related to the provision of services,
3. requirements related to patients' rights, and
4. requirements related to administration and other matters.

It seems that while this Committee was meeting over the past year and one-half the federal government has significantly pre-empted the states' authority to regulate nursing homes. Nursing homes will have new federal requirements about whom they hire, their qualifications, how employees are trained, how frequently and by whom, what services are provided, and to whom, and how services will be evaluated. (For further analysis of OBRA, see appendix C).

The discussion and summary information contained in this secton is not inclusive of all information brought before the Committee. For those interested in the subject the Committee minutes contain a great amount of quality information for further study.

At its October 26 meeting, the Committee reviewed the information it had gathered during the course of its study. After discussing a wide range of possible recommendations, the Committee recommends the following section.

FINDINGS

1. The Committee finds that there are currently in statute strong positive regulatory provisions that may not have been strictly enforced. This may be due to growth and change within the affected industries and lack of funding by the General Assembly for enforcement personnel. Any new measures recommended by this Committee must be built upon the strong regulatory system that is currently in place.

2. The 1978 amendments to the Older American Act required that the state agency administering Older American Act funds (Division of Aging) must operate a statewide long term care ombudsman program. This legislation also required the appointment of a state long term care ombudsman who had the responsibility to:

A. Investigate and resolve complaints made by or for older persons in long term care facilities about actions that may adversely affect their health, safety, welfare or rights.

B. Monitor the development and implementation of federal, state, and local laws, regulations, and policies relating to long term care in the State.

C. Provide information to public agencies about the problems of older people in long term care facilities.

D. Train volunteers and assist in the development of cited organizations to participate in the ombudsmand program.

During this same period the North Carolina General Assembly passed legislation establishing the Nursing Home and the Domiciliary Home Bill of Rights. The General Assembly also established the Nursing Home and Domiciliary Home Community Advisory Committees. The proper functioning of these Committees would not have been possible without the staff work of the Ombudsman Program.

The Division of Aging was charged by the General Assembly with the responsibility for providing the Community Advisory Committees with information, guidelines, training, and consultation to direct them in the performance of their duties. In the fall of 1983 the Division of Aging, feeling the need to provide more support to local Committees, established a half-time regional ombudsman position in each of the eighteen Area Agencies on Aging across the State. The persons hired for these positions were provided extensive training in order to carry out their responsibilities for working with Community Advisory Committees. This back-up to the Committees has proven invaluable in the task of providing Committee members with information and training on the wide array of topics relating to residents' rights and quality of life for nursing home and domiciliary home residents.

The interrelationship between the Ombudsman Program and the Community Advisory Committee system has been extremely beneficial to the institutionalized elderly in this State. Since the Ombudsman Program has no basis in State statute as does the Nursing Home and Domiciliary Home Advisory Committees, the Committee finds that it is now appropriate to recommend to the General Assembly that it also authorize the Ombudsman Program by State statute. (See Recommendation 1)

3. An exclusion in the Nursing Home Patients Bill of Rights was brought to the attention of the Committee in its public hearing process. Contained within the Declaration of Residents' Rights for rest homes in G.S. 131E-21(14) is the requirement that the patient, patients responsible family member or guardian be notified when a facility is issued a provisional license or notice of revocation of license by the North Carolina Department of Human Resources. The basis for the action must be disclosed. This provision is not contained within the nursing Home Patient's Bill of Rights, and the Committee feels that the same language in G.S. 131E-21(14) should be included for nursing home patients. (See Recommendation 2).

4. The Committee finds that there is a great need to reauthorize this Committee to continue the study of nursing homes and rest homes. If one word could describe this Committee's feelings about the vast amounts of information presented, it would be "overwhelmed". So many heart felt issues have been presented and yet there has been so little time to adequately analyze the data and propose solutions. The "Proceedings" section details a great number of issues while the "recommendations" sections contain only a few bills for the 1989 Session. The following issues need more study before legislation is recommended:

A. The placement and adequacy of the regulatory process for rest homes;

B. The impact of the federal Omnibus Reconciliation Act Of 1987 on the nursing home industry in the State;

C. Issues of quality of care and the needs of certain populations within the facilities. (See Recommendation 3)

5. One of the crucial elements in preparing for an aging society is qualified manpower in the specialty field of geriatrics. It is crucial to close the gap that now exists between the need for and the limited supply of qualified personnel. This is primarily the task of formal educational institutions. Colleges and universities across the State now offer gerontology courses and community colleges provide training for para-professonal workers. Professional schools of medicine, nursing, social work also have emerging concentrations in aging.

An equally important task is to upgrade the knowledge, skills, and abilities of many persons already working in the field of aging who have limited backgrounds in geriatics. This task currently falls to state and county governments and to agencies, organizations and facilities that employ persons to work with older persons.

And yet more needs to be done. The Committee believes that there is a need for the Division of Aging to establish an inventory of geriatric programs in the State and to suggest expansion where needed. It should be the role of the Division to stimulate an

aging curriculum for professionals and para-professionals with appropriate cooperative efforts by formal educational institutions and the Department of Human Resources to expand the pool of students trained as aging professionals. A coordinated effort between educational facilities and human service agencies will lead to workers who have the knowledge base and skills needed to provide care and services to older people.

6. It is clear that older adults quickly exhaust their resources when paying for long term care. Studies show that 65 percent of single older adults will become impoverished after a nursing home stay of 13 weeks. Private insurance covered only 1.6 percent of the nursing home costs paid for by private resources. Medicare supplement policies offer only marginal benefits to a comsumer. Since Medicare and Medicaid are inadequate to finance long-term health care, more and more attention is being focused on developing private long term care insurance policies. The Committee believes that the General Assembly should turn its attention to examining the issues in financing long term care and consider the State's options. Some of the options that may need study are:

A. Whether to mandate long term insurance coverage;

B. Impediments to product development;

C. Whether the State could promote product purchase; and

D. Minimum standards of coverage. (See Recommendation 4)

7. The Committee believes that the North Carolina General Assembly can be justifiably proud in the creation of the system of Nursing Home Advisory Committees and the Domiciliary Home Advisory Committees. These volunteers have done great work in nursing home and rest home patient advocacy. But from its creation, questions have arisen regarding liability protection for these volunteer members. Who should defend them if they are sued because of actions, statements or reports made by members while performing committee functions? These questions should be addressed and settled once and for all by a study comdmittee of the North Carolina General Assembly.

8. Nearly all bedside care in nursing homes is performed by nursing assistants. While this care is under the supervision of licensed nurses, the nursing assistant spends more time with the patient than anyone else on the health care team. Experts advise that the quality of direct patient care delivered by these assistants and aides is enhanced through proper training. Therefore adequate training for nursing assistants is a must in any effort to improve quality of care.

The Committee was impressed with a 440 hour on-the-job in-house certification course offered by Guilford Technical Community College that was presented to the Committee. This course has been supported by the local community and has been producing quality nursing assistants for nursing homes for 18 years. The Committee supports communities' efforts to design and implement a program tailored to its own needs.

9. Our society believes that one of its main support structures is the family, living together and helping each other. The stark fact is that often the generations are separate and separated. This is vividly illustrated by a visit to most long term care facilities. The Committee believes that there is much benefit to be gained by fostering intergenerational contacts in these facilities.

To this end, the Committee believes that the Assistant Secretary for Aging in the Department of Human Resources, as one of the duties, should create a task force to make recommendations that would demonstrate and foster intergenerational interests. Particular attention should be paid to recommendations related to nursing homes and rest homes. Suggested membership may come from public and private sector education, aging, and child welfare organizations. Findings and needed actions could be reported to the North Carolina General Assembly.

10. The Committee heard that there has been neglect of the mental health problems of older adults, particularily in the rest home and nursing home settings. A recent national study of nursing homes found that 68% of the residents have mental disorders and there is vitually no treatment for these people. These are people who, up until a few years ago,

would have been in our State psychiatric hospitals. They have been reinstitutionalized in our communities without the treatment that they would have received in our psychiatric institutions.

Experts believe that the majority of these patients in our State have ended up in rest homes rather than nursing homes. Also, by 1990 because of the Omnibus Reconciliation Act of 1987 states must start reviewing mentally ill and mentally retarded residents in nursing homes to see if they are in need of mental health treatment.

Therefore, the Committee believes that the State has a special responsibility to address the needs of the mentally ill and mentally retarded in our rest homes. Department of Human Resources 1987 data shows that approximately one half of the total population in rest homes are mentally ill or mentally retarded. The Committee believes that to better serve the needs of both the non-mentally ill and mentally ill and mentally retarded, these two populations should be separated from the frail elderly.

Since a large majority of residents of rest homes receive State - County Special Assistance funds, this mechanism could be used to fund an enhanced level of care. A payment higher than the rate for regular rest homes could be created for certain mentally ill, mentally retarded, and other individuals who need a higher than normal level of care. This new payment mechanism would create three levels of care rather than the current two levels.

II. The Committee believes that most nursing homes and rest homes are meeting or exceeding the staffing requirement that are part of the licensure and regulatory process. Upon investigation, the staffing regulations for a skilled nursing facility (SNF) of 60 beds require, for daytime hours, 7 personnel which includes 1-RN, 1-LPN and 5 nurses aides. In the evening the figure drops to 6 personnel, which include 2-LPN's and 4-NA. Then in the night-time, the figure drops again to only four personnel. This includes 1 or 2 LPN's and 2 or 3 NA's. At the intermediate level, the numbers drop by one person for each

shift. These are the patients that the frail, the ones that family members have chosen to place in a facility because their care needs have exceeded the families' capabilities.

It is obvious to the Committee that the long term care industry can only offer services for which someone is willing to pay. The largest segment of nursing home and rest home care is paid by government payors and these government payors define the amounts of services that will be purchased.

The Committee believes that the current staffing requirements in nursing homes and rest homes are not adequate to accomplish the job that needs to be done. The General Assembly should look at the staff-to-patient ratios and give serious consideration to increasing the numbers of staff to patients.

12. Nursing home and rest home care is in a state of change from earlier times. Today these institutions are caring for greater numbers of people who have more significant health problems and require more supervision and closer monitoring.

For instance, many heavy care patients remain in the hospital or at home awaiting placement in nursing homes. These alternatives to proper placement can be detrimental to the patients and the family. Those patients with tracheostomy, ventilator, communicable disease, tube feeding and ducubitus continue to present a dilema in placement. The Committee also heard many examples of the special need for care by dementia patients.

Also, deinstitutionalization at the DHR regional psychiatric hospitals and mental retardation centers, which began fifteen years ago, has brought many mentally ill and developmentally disabled adults to live in rest homes. The diagnostic related groups (DRG) hospital payment system rule imposed by the Medicare program three years ago has resulted in people being discharged earlier and sicker from hospitals and many have been placed in rest homes. With the shortage of intermediate care nursing home beds, it is likely that some people who would have been placed there have been placed in rest homes. With the increasing incidence of Alzheimer's Disease and the great stress and strain this

places on family caregivers, many older people are eventually placed in group care facilities, some in rest homes.

Therefore, the Committee believes that now is the time for the General Assembly to consider potential solutions to the nursing home and rest home placement problem for persons with heavy care requirements. A higher payment level would likely be needed to cover the additional costs of higher requirements for heavy care such as higher staffing requirements and special equipment.

13. The nursing home and rest home industries offer a vital and necessary service to families and individuals in this State. Since these services are offered to such a vulnerable population, the General Assembly by its past actions has determined that these enterprises should be regulated by the State. The protection of vulnerable people depends upon the effective monitoring and enforcement chain established by law and regulation and the strict use of sanctions against violators.

The purpose of the Health Care Facilities Branch, Licensure Section, Division of Facility Services, is to ensure compliance with statutes and rules applicable to state licensure (or certification) of health care facilities, home health agencies, hospice programs, cardiac rehabilitation programs and clinics certified for performance of abortions). The Branch is also required to investigate and assure resolution of all complaints concerning the referenced facilities within the sixty-day time frame mandated by G.S. 131E-124 (a) and assure compliance by nursing homes with Patients' Rights ligislation. There were many speakers before the Committee who suggested that the complaint investigation and resolution process was not as prompt as required by law or as effective as it needs to be to insure confidence.

To restore confidence in our State's complaint investigation and resolution, there is a great need to thoroughly investigate each complaint received and to do it immediately. The Committee believes that the goals for this system ought to be:

A. To initiate and complete investigations within ten working days of receipt; and

B. To advise each complainant within 30 days of receiving the complaint of the results of the investigation.

The Committee believes that the General Assembly ought to expand and enhance the State's capability for complaint investigation. This increased capability has been estimated to require an additional appropriation of $776,500. (See Appendix D) The majority of this cost would be for additional personnel (See Recommendation 5).

14. Finding out who the elderly are and what their needs are- now and will be in the future - is a key task for State government. The Committee finds that much of the planning for a long term care system has been based on less than adequate North Carolina generated data. How will the legislative and executive branches decide upon questions related to allocation and management of resources for long term care facilities if timely, adequate, and appropriate data, and the capacity to analyze information is not available?

It is a fact of life that governmental bodies place data collection and analysis at the bottom of any priority list, but the Committee believes that the nursing home care versus home and community care question suggests one over-riding conclusion. Innovative means of both controlling costs and providing needed care must be found and it must be based on a sound empirical base.

15. The Committee found in its investigation that there is no State statute or regulation that excludes felons or persons convicted of abuse or neglect from working as an aide in a nursing home or rest home. It goes without saying that this should be a minimum requirement for these types of institutions.

But there remain significant questions about the execution of such a requirement. Facility administrators must be able to easily confirm the criminal record of a prospective employee if so required by law. The Police Information Network has the needed information but access is not permitted except through strict authorization and therefore, not readily available to facility administrators. This issue needs to be studied and resolved at the earliest possible time.

16. In the late 60's and 70's there was great national and State concern over the spiraling cost of medical care. One theory given for this spiral was that much of the increase in the cost of care was due to unnecessary duplication of services and facilities that raise an institution's overhead. This concern culminated in a federal requirement and a North Carolina law that required a State certification that there was a need for the facility or service as defined by a State Health Plan before the facility could be built. Thus the certificate of need (CON) program came into being both for nursing homes and other types of health facilities and services. For nursing homes the process is designed to match supply of nursing home beds with need.

Throughout the Committee's public hearing process, much concern about the certificate of need process was expressed by local governmental officials and families of nursing home patients. Their feeling was that the system was in crises with the following impact:

A. Facilities pick and choose the consumer because of the lack of bed supply;

B. Families often have to take a place in distant locations and/or facilities they feel offer substandard care; and

C. Facilities are assured essentially full capacity regardless of the caliber of care being offered.

The Committee finds that there are weaknesses within the current CON system and that now is the time for North Carolina to reevaluate the process. Particular attention should be given to designing the process so that allocated beds are placed in operation in a shorter time than is currently the case. Any changes to shorten the time required to place a bed on-line must include methods for shortening the appeals process. There may also be a need to reevaluate the State Health Plan process so that more beds are available for allocation.

Under current federal law smaller hospitals are allowed to convert acute beds to nursing home beds. This "swing bed" concept should be exercised by the hospitals that

are permitted to do so. State regulation also allows unused acute beds to be used up to 30 days for long term care. This option should also be exercised.

RECOMMENDATIONS

THE COMMITTEE RECOMMENDS THAT:

1. THE 1989 GENERAL ASSEMBLY ESTABLISH BY STATE STATUTE THE AUTHORIZATION FOR THE DIVISION OF AGING TO CONTINUE THE LONG TERM CARE OMBUDSMAN PROGRAM AS REQUIRED BY THE OLDER AMERICAN ACT OF 1965 AS AMENDED. (See Appendix E)

2. THE 1989 GENERAL ASSEMBLY AMEND THE NURSING HOME PATIENTS BILL OF RIGHTS, 131E-117, TO INCLUDE THE PROVISION THAT A PATIENT, THE PATIENT'S RESPONSIBLE FAMILY MEMBER OR GUARDIAN BE NOTIFIED WHEN THE FACILITY IS ISSUED A PROVISIONAL LICENSE OR NOTICE OF REVOCATION OF LICENSE. (See Appendix F)

3. THE 1989 GENERAL ASSEMBLY REAUTHORIZE THE LIGISLATIVE RESEARCH COMMISSION TO STUDY CARE PROVIDED IN REST HOMES, INTERMEDIATE CARE FACILITIES AND SKILLED NURSING FACILITIES. (See Appendix G).

4. THE 1989 GENERAL ASSEMBLY ESTABLISH A LEGISLATIVE STUDY COMMITTEE TO STUDY LONG TERM CARE INSURANCE. (See Appendix H)

5. THE 1989 GENERAL ASSEMBLY REQUIRE THE DEPARTMENT OF HUMAN RESOURCES TO ESTABLISH AND MAINTAIN THE CAPACITY TO COLLECT, ANALYZE AND REPORT DATA ON NURSING HOMES AND REST HOMES TO INCLUDE LOCATION, CAPACITY, AVERAGE VACANCY RATE, ADMINISTRATIVE PENALTIES LEVIED AGAINST EACH INSTITUTION, COST OF PRIVATE PAY BEDS AND OTHER INFORMATION NEEDED FOR LONG RANGE PLANNING PURPOSES. (See Appendix I).

6. THE 1989 GENERAL ASSEMBLY APPROPRIATE $776,000 TO THE DEPARTMENT OF HUMAN RESOURCES DIVISION OF FACILITY SERVICES FOR INCREASED PERSONNEL AND SUPPORT SERVICES TO SIGNIFICANTLY IMPROVE THE COMPLAINT INVESTIGATION AND RESOLUTION PROCESS FOR NURSING HOMES AND REST HOMES. (See Appendix J)

APPENDIX A

COMMITTEE ON CARE PROVIDED BY REST HOMES, INTERMEDIATE CARE FACILITIES, AND SKILLED NURSING HOMES AND OMBUDSMAN

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION
RATIFIED BILL

CHAPTER 873
HOUSE BILL 1

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMITTEES AND COMMISSIONS, TO MAKE APPROPRIATIONS THEREFOR, AND TO AMEND STATUTORY LAW.

The General Assembly of North Carolina enacts:

PART I. TITLE

Section 1. This act shall be known as "The Study Commissions and Committees Act of 1987."

. . .

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Sec. 2.1. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1987 bill or resolution that originally proposed the issue or study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope and aspects of the study. The topics are:

(41) Care Provided by Rest Homes, Intermediate Care Facilities, and Skilled Nursing Homes (S.J.R. 856-Harris),

(42) Ombudsman Study (S.B. 857-Harris),

APPENDIX B

MEMBERSHIP OF LRC COMMITTEE ON CARE PROVIDED BY REST HOMES, INTERMEDIATE CARE FACILITIES, AND SKILLED NDURSING HOMES; AND OMBUDSMAN STUDY

President Pro Tem's Appointments	Speaker's Appointments
Senator Ollie Harris	Representative Ruth M. Easterling
Ms. Louisa Cox	Representative Logan Burke
Senator Donald Kincaid	Representative Joe B. Raynor
Mr. John Liverman, Jr.	Mr. Sam Beam
Senator Helen R. Marvin	Representative Dennis A. Wicker
Ms. Sue B. Payne	Representative Betty H. Wiser

OMNIBUS BUDGET RECONCILIATION ACT - NURSING HOME REFORM REQUIREMENTS

1. Nurse Aide Training and Registry
   * Establish minimum requirements for nurse aide training and competency evaluation
   * Approval process for training and competency evaluation programs
   * Nurse Aide Registry for persons successfully completing training, reports of abuse and neglect or misappropriation of residents' property

2. Residents' Rights
   * Develop residents' rights and notice procedure (add covered services)
   * Develop transfer and discharge rights and right to be readmitted to first available bed
   * Develop appeals process for transfer and discharge
   * Protection of residents' funds

3. Elimination of Distinction Between Skilled Nursing and Intermediate Care
   * Licensure impact - staffing, levels of care
   * Reimbursement impact
   * Develop waiver criteria

4. Survey and Certification Process
   * Conduct educational sessions
   * Investigate allegations of abuse and neglect and misappropriation of property
   * Monitor compliance
   * Meet surveyor qualifications
   * Notification and posting of survey results

5. Sanctions
   * Develop alternative sanctions

6. Preadmission and Annual Screening to Ensure Appropriate Placement of Mentally Ill and Mentally Retarded
   * Preadmission screening
   * Review of current patients
   * Annual reviews
   * Develop appeals process

Complaints Investigation Unit

Current Staff:

1. Team Manager (RN)
2. Secretary
4. Investigators (RNs)

Objectives:

1. To expand the complaints investigation unit to the extent necessary to complete each investigation within seven days.
2. Investigate 960 complaints annually in nursing homes.
3. Investigate 240 complaints annually in domiciliary care facilities.

Additional Staff Needed:

12 - Registered Nurses (26,000)	312,000
3 - Social Workers (24,000)	72,000
1 - Architect	34,000
2 - Clerical/Administrative Assistants	48,000
Cost of benefits	182,000
Travel Costs	82,000
Supplies and Materials	6,500
Equipment (Desks, Chairs, etc.)	21,500
Office Rental	18,500
TOTAL	776,500

Attachment 17
(Due 9/26/88)

WORKSHEET II. EXPANSION BUDGET REQUEST*

Priority No. ___ of ___

BUDGET CODE 14470 DEPARTMENT Human Resources, AGENCY OR INSTITUTION Licensure Section
FUND CODE 1313 FUND TITLE Health Care Facilities Branch
TITLE OF REQUEST Expansion Budget
RELATES TO C.I.? YES ____ NO X ; IF YES, TITLE OF C.I. _____
C.I. BUDGET CODE NO. _____ ITEM NO. _____ PROJECTED COMPLETION DATE ___/___/___
LEGISLATIVE CHANGES/ADDITIONS REQUIRED TO IMPLEMENT? YES ___ NO X IF YES, ATTACH DRAFT

DETAIL DAS OBJECT	DAS OBJECT TITLE	WHOLE DOLLARS 1989-90	1990-91
1210	Salaries and Wages (8) Facility Survey Consultants	206,688 [55,200]	206,688
1810	Social Security Contributions	15,522 [11,642]	15,522
1820	Retirement Contribution	23,128 [17,346]	23,128
1830	Hospitalization	9,008 [6,756]	9,008
2600	Office Supplies	4,000	4,000
3100	Travel	20,000 [15,000]	20,000
5100	Equipment	12,000	--
4130	Office Rental	8,640	8,640
		[30,400]	
	TOTAL REQUIREMENTS	298,986	286,986
	RECEIPTS	-0-	-0-
	APPROPRIATION	298,986	286,986
	NUMBER OF POSITIONS	(8)	(8)

*Submit on 8 1/2 x 11-inch buff yellow paper.

We now have 4 investigators -

(over)

IV. STATISTICAL INDICATORS

	85-86	86-87	87-88	88-89	89-90	90-91
Complaints Investigations	469	541	680	800	920	1,080

V. PRIOR YEARS EXPENDITURES (TOTAL REQUIREMENTS, RECEIPTS, APPROPRIATIONS) AND POSITIONS FOR PROGRAM OR PROJECTS:

Description	Actual 1987-88	Authorized 1988-89	Requested 1989-90	Requested 1990-91
Total Requirements	1,799,522	1,880,500	2,179,486	2,167,486
Receipts	226,243	230,000	230,000	230,000
Appropriation	1,573,279	1,650,500	1,949,486	1,937,486
No. of Employees	(46)	(46)	(54)	(54)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

D

89W-LF-34
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Ombudsman Program. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A LONG-TERM CARE OMBUDSMAN PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 4D.

"Long-Term Care Ombudsman Program.

"§ 143B-181.15. Long-Term Care Ombudsman Program/Office; policy.--The General Assembly finds that a significant number of older citizens of this State reside in long-term care facilities and are dependent on others to provide their care. It is the intent of the General Assembly to protect and improve the quality of care and life for residents through the establishment of a program to assist residents and providers in the resolution of complaints or common concerns, to promote community involvement and volunteerism in long term care facilities, and to educate the public about the long term care system. It is the further intent of the General Assembly that the Department of Human Resources, within available resources and pursuant to its duties under the

Older Americans Act of 1965, as amended, 42 U.S.C. 3001-3057g, ensure that the quality of care and life for these residents is maintained, that necessary reports are made, and that, when necessary, corrective action is taken at the Department level.

"**§ 143B-181.16. Long-Term Care Ombudsman Program/Office; definition.**--Unless the content clearly requires otherwise, as used in this Article:

(1) 'Long-term care facility' means any skilled nursing facility and intermediate care facility as defined in G.S. 131A-(4) or any domiciliary home as defined in G.S. 131D-20(2).

(2) 'Resident' means any person who is receiving treatment or care in any long-term care facility.

(3) 'State Ombudsman' means the State Ombudsman as defined by the Older Americans Act of 1965, as amended, who carries out the duties and functions established by this Article.

(4) 'Regional Ombudsman' means a person employed by an Area Agency or Aging to carry out the functions of the Regional Ombudsman Office established by this Article.

"**§ 143B-181.17. Office of State Long-Term Care Ombudsman Program/Office; establishment.**--The Secretary of Department of Human Resources shall establish and maintain the Office of State Long-Term Ombudsman in the Division of Aging. The Office shall carry out the functions and duties required by the Older Americans Act of 1965, as amended. This Office shall be headed by a State Ombudsman who is a person qualified by training and with experience in geriatrics and long term care. The Attorney General shall provide legal staff and advice to this Office.

"**§ 143B-181.18.-- Office of State Long-Term Care Ombudsman Program/ State Ombudsman duties.**--The State Ombudsman shall:

(1) Promote community involvement with long term care provider and residents of long term care facilities and serve as liaison betweeen residents, residents'

families, facility personnel, and facility administration;

(2) Supervise the Long-Term Care Program pursuant to rules adopted by the Secretary of the Department of Human Resources pursuant to G.S. 143B-10;

(3) Certify regional ombudsmen. Certification requirements shall include an internship training in the aging process, complaint resolution, long term care issues, mediation techniques, recruitment and training of volunteers, and relevant federal, State, and local laws, policies, and standards;

(4) Attempt to resolve complaints made by or on behalf of individuals who are residents of long-term care facilities, which complaints relate to administrative action that may adversely affect the health, safety, or welfare of residents;

(5) Provide training and technical assistance to regional ombudsmen;

(6) Establish procedures for appropriate access by regional ombudsmen to long-term care facilities and residents' records including procedures to protect the confidentiality of these records and to ensure that the identity of any complainant or resident will not be disclosed without the written consent of the complainant or resident or upon court order;

(7) Analyze data relating to complaints and conditions in long-term care facilities to identify significant problems and recommend solutions;

(8) Prepare an annual report containing data and findings regarding the types of problems experienced and complaints reported by residents as well as recommendations for resolutions of identified long-term care issues;

(9) Prepare findings regarding public education and community involvement efforts and innovative

programs being provided in long- term care facililties: and

(10) Provide information to public agencies, and through the State Ombudsman, to legislators, and others regarding problems encountered by residents or providers as well as recommendations for resolution.

"**§ 143B-181.19.-- Office of Regional Long-Term Care Ombudsman; Regional Ombudsman; duties.**--(a) An Office of Regional Ombudsman Program shall be established in each of the Area Agencies on Aging, and shall be headed by a Regional Ombudsman who shall carry out the functions and duties of the Office. The Area Agency on Aging administration shall provide administrative supervision to each Regional Ombudsman.

(b) Pursuant to policies and procedures established by the State Office of Long-Term Care Ombudsman, the Regional Ombudsman shall:

(1) Promote community involvement with long-term care facilities and residents of long-term care facilities and serve as a liaison between residents, residents' famililes, facility personnel, and facility administration;

(2) Receive and attempt to resolve complaints made by or on behalf of residents in long-term care facilities;

(3) Collect data about the number and types of complaints handled;

(4) Work with long-term care providers to resolve issues of common concern;

(5) Work with long-term care providers to promote increased community involvement;

(6) Offer assistance to long-term care providers in staff training regarding residents' rights;

(7) Report regularly to the office of State Ombudsman about the data collected and about the activities of the Regional Ombudsman;

(8) Provide training and technical assistance to the community advisory committees; and

(9) Provide information to the general public on long-term care issues.

"§ 143B-181.20.-- State/ Regional Long-Term Care Ombudsman; authority to enter; cooperation of government agencies; communication with residents.--(a) The State and Regional Ombudsman may enter any long-term care facility and may have reasonable access to any resident in the reasonable pursuit of his function. Upon entering the facility, the Ombudsman shall notify the administration or the person in charge of the facility before speaking to the resident. The Ombudsman may communicate privately and confidentially with residents of the facility individually or in groups. The Ombudsman shall have access to the patient records of any resident, under procedures established by the State Ombudsman pursuant to G.S.143B-181.18(6), provided that the medical and personal financial records pertaining to an individual resident may be inspected only with the permission of the resident or his legally appointed guardian, if any. Entry shall be conducted in a manner that will not significantly disrupt the provision of nursing or other care to residents.

(b) The State or Regional Ombudsman shall identify himself as such to the resident, and the resident has the right to refuse to communicate with the Ombudsman.

(c) The resident has the right to participate in planning any course of action to be taken on his behalf by the State or Regional Ombudsman, and the resident has the right to approve or disapprove any proposed action to be taken on his behalf by the Ombudsman.

(d) The State or Regional Ombudsman shall shall meet with the facility administrator or person in change before any action is taken to allow the facility the opportunity to respond,

provide additional information, or take appropriate action to resolve the concern.

(e) The State and Regional Ombudsman may obtain from any government agency, and this agency shall provide, that cooperation, assistance, services, data, and access to files and records that will enable the Ombudsman to properly perform his duties and exercise his powers, provided this information is not privileged by law.

(f) If the subject of the complaint involves suspected abuse, neglect, or exploitation, the State or Regional Ombudsman shall notify the county department of social services' Adult Protection Services section of the county department of social services, pursuant to Article 6 of Chapter 108A of the General Statutes.

"§ 143B-181.21. State/Regional Long-Term Care Ombudsman; resolution of complaints.--(a) Following receipt of a complaint, the State or Regional Ombudsman shall attempt to resolve the complaint using, whenever possible, informal technique of mediation, conciliation, and persuasion.

(b) Complaints or conditions adversely affecting residents of long-term care facilities that cannot be resolved in the manner described in subsection (a) of this section shall be referred by the State or Regional Ombudsman to the appropriate licensure agency pursuant to G.S. 131E-100-110 and G.S.131D-2.

"§ 143B-181.22. State/Regional Long-Term Care Ombudsman; study.--

The identity of any complainant, resident on whose behalf a complaint is made, or individual providing information on behalf of the resident or complainant relevant to the attempted resolution of a complaint is confidential and may be disclosed only with the express permission of the person. The information produced by the process of complaint resolution may be disclosed by the State Ombudsman or Regional Ombudsman only if the identity of any such person is not disclosed by name or inference. If the identity of any such person is disclosed by name or inference in

such information, the information may be disclosed only with his express permission. If the complaint becomes the subject of a judicial proceeding, an investigative information may be disclosed for the purpose of the proceeding.

"§ 143B-181.23. State/ Regional Long-Term Care Ombudsman; prohibition of retaliation.--No person shall discriminate or retaliate in any manner against any resident or relative or guardian of a resident, any employee of a long-term care facility, or any other person because of the making of a complaint or providing of information in good faith to the State Ombudsman or Regional Ombudsman.

"§ 143B-181.24. Office of State/ Regional Long-Term Care Ombudsman; immunity from liability.--No representative of the Office will be liable from civil suit for good faith performance of official duties.

"§ 143B-181.25. Office of State/ Regional Long-Term Care Ombudsman; Penalty for willful interference.--Willful interference with representatives of the Office in the performance of their official duties is a general misdemeanor."

Sec. 2. This act is effective upon ratification.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S/H D

89-LN-004
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Nursing Home Patient's Rights. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR NURSING HOME PATIENTS' RIGHT TO NOTIFICATION WHEN THE FACILITY'S LICENSE IS REVOKED OR MADE PROVISIONAL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131E-117 reads as rewritten:

"§ 131E-117. Declaration of patient's rights.

All facilities shall treat their patients in accordance with the provisions of this Part. Every patient shall have the following rights:

(1) To be treated with consideration, respect, and full recognition of personal dignity and individuality;

(2) To receive care, treatment and services which are adequate, appropriate, and in compliance with relevant federal and State statutes and rules;

(3) To receive at the time of admission and during the stay, a written statement of the services provided by the facility, including those required to be offered on an as-needed basis, and of related charges. Charges for services not covered under

Medicare or Medicaid shall be specified. Upon receiving this statement, the patient shall sign a written receipt which must be on file in the facility and available for inspection;

(4) To have on file in the patient's record a written or verbal order of the attending physician containing any information as the attending physician deems appropriate or necessary, together with the proposed schedule of medical treatment. The patient shall give prior informed consent to participation in experimental research. Written evidence of compliance with this subdivision, including signed acknowledgements by the patient, shall be retained by the facility in the patient's file;

(5) To receive respect and privacy in the patient's medical care program. Case discussion, consultation, examination, and treatment shall remain confidential and shall be conducted discreetly. Personal and medical records shall be confidential and the written consent of the patient shall be obtained for their release to any individual, other than family members, except as needed in case of the patient's transfer to another health care institution or as required by law or third party payment contract;

(6) To be free from mental and physical abuse and, except in emergencies, to be free from chemical and physical restraints unless authorized for a specified period of time by a physician according to clear and indicated medical need;

(7) To receive from the administrator or staff of the facility a reasonable response to all requests;

(8) To associate and communicate privately and without restriction with persons and groups of the patient's choice on the patient's initiative or that of the persons or groups at any reasonable hour; to send and receive mail promptly and unopened, unless the patient is unable to open and read personal mail; to have access at any reasonable hour to a telephone where the patient may speak privately; and to have access to writing instruments, stationery, and postage;

(9) To manage the patient's financial affairs unless authority has been delegated to another pursuant to a power of attorney, or written agreement, or some other person or agency has been appointed for this purpose pursuant to law. Nothing shall prevent the patient and facility from entering a written agreement for the facility to manage the patient's financial affairs. In the event that the facility manages the patient's financial affairs, it shall have an accounting available for inspection and shall furnish the patient with a quarterly statement of the patient's account. The patient shall have reasonable access to this account at reasonable hours; the patient or facility may terminate the agreement for the facility to manage the patient's financial affairs at any time upon five days' notice.

(10) To enjoy privacy in visits by the patient's spouse, and, if both are inpatients of the facility, they shall be afforded the opportunity where feasible to share a room;

(11) To enjoy privacy in the patient's room;

(12) To present grievances and recommend changes in policies and services, personally or through other persons or in combination with others, on the patient's personal behalf or that of others to the facility's staff, the community advisory committee, the administrator, the Department, or other persons or groups without fear of reprisal, restraint, interference, coercion, or discrimination;

(13) To not be required to perform services for the facility without personal consent and the written approval of the attending physician;

(14) To retain, to secure storage for, and to use personal clothing and possessions, where reasonable;

(15) To not be transferred or discharged from a facility except for medical reasons, the patient's own or other patients' welfare, nonpayment for the stay, or when the transfer or discharge is mandated under Title XVIII (Medicare) or Title XIX (Medicaid) of the Social Security Act. The patient shall be given at least five days' advance notice to ensure orderly transfer or

discharge, unless the attending physician orders immediate transfer, and these actions, and the reasons for them, shall be documented in the patient's medical record.

(16) To be notified when the facility is issued a provisional license received after full licensure, or notice of revocation of license by the North Carolina Department of Human Resources and the basis on which the provisional license or notice of revocation of license was issued. The patient's responsible family member or guardian shall also be notified."

Sec. 2. This act is effective upon ratification.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S D

SENATE JOINT RESOLUTION 89-LN-005
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Sponsors:

Referred to:

A JOINT RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH COMMISSION TO CONTINUE THE STUDY OF THE CARE PROVIDED BY REST HOMES, INTERMEDIATE CARE FACILITIES, AND SKILLED NURSING HOMES.

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The Legislative Research Commission may study the following issues concerning care provided by rest homes, intermediate care facilities, and skilled nursing homes:

(1) The placement and adequacy of the regulatory process for domiciliary homes;

(2) The fine and penalty process for nursing homes and domiciliary homes;

(3) The need to have mandatory independent nursing home preadmission screening regardless of assets and income levels to encourage appropriate use of alternative community based care;

(4) Follow-up of the implementation of the Omnibus Reconciliation Act of 1987 on the nursing home industry within the State;

(5) Separation of residents with severe mental illness from the frail elderly in domiciliary homes;

(6) The need to increase reimbursement rates for facilities that serve patients with special needs; and

(7) A registry that would allow nursing home and domiciliary home administrators to check the criminal record of potential aides.

Sec. 2. The Legislative Research Commission may make an interim report, including legislative recommendations, to the 1989 General Assembly, Regular Session 1990, and may make a final report to the 1991 General Assembly.

Sec. 3. This resolution is effective upon ratification.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

HOUSE D

89-LN-006
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Long-Term Care Insurance. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE AVAILABILITY AND COVERAGE OF LONG-TERM CARE INSURANCE.

Whereas, life expectancy has increased; and

Whereas, the need for both home and institutional services increases with age; and

Whereas, the Medicaid Program is proposing to spend increasingly large sums in the coming biennium for long-term care services, which is an increasing public burden; and

Whereas, the Medicare Program is a limited resource; and

Whereas, the development of private insurance underwriting long-term care services would benefit consumers, providers, and government; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. The Legislative Research Commission may study the availability, coverage, and provision of long-term care insurance in North Carolina and may make recommendations to overcome any barriers to the provision of private long-term care insurance coverage. The Legislative Research Commission may

investigate the relationship between Medicaid, Medicare and long-term care insurance and whether private long-term care coverage can provide some relief to the increasing public burden of Medicaid cost escalation. The Legislative Research Commission may consult with the Commissioner of Insurance, the insurance industry, the long-term care industry, and senior citizens' groups.

Sec. 2. The Legislative Research Commission may study the liability insurance and defense issue for Nursing Home Advisory Committees and Domiciliary Home Advisory Committees.

Sec. 3. The Legislative Research Commission shall make a final report to the 1991 General Assembly.

Sec. 4. This act is effective upon ratification.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

D

88d-JY-021
THIS IS A DRAFT 22-NOV-88 10:34:15

Short Title: Long-Term Care Data Capability. (Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT THE DEPARTMENT OF HUMAN RESOURCES ESTABLISH AND MAINTAIN THE CAPABILITY TO PROVIDE NECESSARY DATA REGARDING LONG TERM CARE FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. The Department of Human Resources, shall establish and maintain the capability to provide to the General Assembly and State and local agencies and individuals all necessary data concerning long term care facilities, including all nursing homes and domiciliary care facilities. The data that the Division shall provide shall include the location of all facilities and their bed capacity, the violations cited against each long term care facility and dates of such violations, the administrative penalties assessed against each long term care facility and the dates of such penalties, and all other data

necessary to assess the adequacy of care provided by the State's long term care facilities.

The Division shall make a report containing all the data it has collected to the General Assembly by January 1, 1990.

Sec. 2. This act shall become effective July 1, 1989.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

D

88d-JY-020
THIS IS A DRAFT 22-NOV-88 10:26:47

Short Title: Nursing/Rest Homes Complaints Funds. (Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO APPROPRIATE FUNDS TO ENHANCE INVESTIGATION AND RESOLUTION OF COMPLAINTS AGAINST NURSING HOMES AND REST HOMES.

The General Assembly of North Carolina enacts:

Section 1. There is appropriated from the General Fund to the Division of Facility Services, Department of Human Resources, the sum of seven hundred seventy-six thousand dollars ($776,000) for the 1989-90 fiscal year and the sum of seven hundred seventy-six thousand dollars ($776,000) for the 1990-91 fiscal year, to expand and enchance the Division's capability to investigate complaints concerning nursing homes and rest homes and to resolve the complaints, as required by G.S. 131E-124(a).

Sec. 2. This act shall become effective July 1, 1989.